IN THE COUNTY COURT OF VICTORIA

Revised
Not Restricted
Suitable for Publication

AT MELBOURNE
CRIMINAL DIVISION

Case No. CR-21-00637

DIRECTOR OF PUBLIC PROSECUTIONS

v

ANNETTE ROBERTS

JUDGE:	HIS HONOUR JUDGE McINERNEY
WHERE HELD:	Melbourne
DATE OF HEARING:	31 August 2021
DATE OF SENTENCE:	17 September 2021
CASE MAY BE CITED AS:	DPP v Roberts
MEDIUM NEUTRAL CITATION:	[2025] VCC 1392

REASONS FOR SENTENCE

Subject:	CRIMINAL LAW
Catchwords:	Sentence – Plea of guilty –Obtain financial advantage by deception – Poker machines – Online gambling site - Gambling addiction - High objective criminality - Good prospects of rehabilitation – *Verdins* principles 1, 3 and 4 enlivened – Imprisonment – Compensation order
Legislation Cited:	s82(1) *Crimes Act 1958*
Cases Cited:	*DPP v Tullipan* [2021] VSCA 191 - *Apted v The Queen* [2021] VSCA 151- *DPP v Zanin* [2020] VCC 963 - *DPP v Caulfield* [2019] VSCA 131
Sentence:	Total effective sentence of 2 years and 8 months imprisonment with a non-parole period of 16 months imprisonment. Compensation order in the aggregate sum of $593,498.77.

APPEARANCES:	Counsel	Solicitors
For the Director	Mr A Sprague	Office of Public Prosecutions

For the Accused	Mr J Taaffe (Plea) Ms Deighton (Sentence)	Doogue and George Lawyers

HIS HONOUR:

1 In the matter of Annette Roberts, Ms Roberts is aged 58 for having been born on in June 1963. In the period of offending she was aged between 54 and 57.

2 I thank everyone who is appearing remotely. It is obviously very difficult for the legal system at the moment to be able to conduct its operations but the co-operation from the profession and, indeed, from people who are prepared to plead in these circumstances. It has to be recognised, which I will refer to later, and I thank everyone. I also apologise for my lengthy hair, but no doubt, I am not on my own in this community.

3 For the Director, Mr Sprague appeared and for Ms Roberts, Mr Joshua Taaffe appeared at the plea. Today his instructor Ms Deighton appears. The plea was conducted on 31 August 2021 when Ms Roberts pleaded guilty to two charges of obtaining financial advantage by deception, an offence again s82(1) of the *Crimes Act.* For each offence the maximum penalty imposed is one of 10 years imprisonment.

4 Exhibit A was accepted by Mr Taaffe as disclosing the facts upon which I am to sentence his client. Charge 1 arose in the period April 2018 through to September 2020. In that period, on 522 occasions, Ms Roberts's credited to her various eight bank accounts controlled by her the sum of $628,598.15 from the business account of the trading entity Travel and Cruise North East, which was a business conducted by Mr and Mrs Reid who had conducted that business in various north-eastern cities of this state from 1979. The precise details of the transfers affected are set out in Schedule A in the indictment. Observing that schedule, one notices that the deposits made to her various bank accounts ranged in value from $20 to $10,000. That she was able to commit these crimes on so many occasions and was made possible because, in her job as a travel consultant, she was trusted to access the accounts of the business in order to facilitate client payments and receipts.

5 The second charge under the same provision of the *Crimes Act* involved, in the period of May 19 to March 2020 of nine, what they call, Mastercard Cash Passport cards, what other people would simply know as travel cards, in clients' names. The money to facilitate those accounts was loaded from the business account and, in particular as detailed in Schedule 3 to the indictment, on 51 occasions Ms Roberts either loaded by way of creation or re-loaded with sums at any one time between either $250 up to $2,200. In total, a sum of which made up the total criminal figure in this count is the figure of $40,636.81.

6 Each charge is laid as a course of conduct charge pursuant to s4A of Schedule 1 of the *Criminal Procedure Act* 2009, and pursuant to sub-s6, each is a charge of a single offence and each charge must, pursuant to s5(2F) of the Sentencing Act, have a sentence which:

(a) reflects to the totality of the criminal offending; and

(b) must not exceed the maximum penalty for any one offence, that is, the maximum penalty that applies to both charges of 10 years imprisonment under s82(1) of the *Crimes Act*.

7 As to such sentences, I note the comments made by the Court of Appeal recently in *DPP v Tullipan* [2021] VSCA 191, [5] and [46]. Interestingly, the comparable cases handed to me by the defendant did not include any course of conduct cases. I will come back to those cases in due course.

8 Ms Roberts comes before the Court with no prior offences. Ms Roberts, during the offending periods, repaid some of the money she removed from the firm bank account and, since detection, has repaid the sum of $27,500. I have signed at the last hearing a compensation order under s86 by way of recompense of $593,498.77 which was consented to by Mr Taaffe on behalf of Ms Roberts. However, the reality is, that, given Ms Roberts' financial position, there is no hope of that being paid.

9 The losses of these crimes have been borne by Mr and Mrs Reid, the owners of the business. To their credit, they have repaid each of the clients' losses accessed by Ms Roberts manipulating repayment of funds received to the business, in particular, as a result of COVID-19 cancellations. Indeed, it was this process which led to Ms Roberts' undoing. The victim impact statement (Exhibit B) provided, a restrained and clear analysis of the impact of this criminality upon the Reids. The financial impact of such losses has been a very serious impact upon the Reids and they are not only, in regard to their general life, but in particular the financial stability of their lives. Indeed, as I have said, to meet their clients' losses they were forced to sell two family properties which otherwise would have been utilised in their business and/or in planning for their retirements, hence compounding the losses that this criminality has caused to the Reids.

10 There is also, of course, being a trading entity in a country area, the impact effected upon the good will of their businesses in these various cities. In that regard, can I thank the Fourth Estate for the article which I read in the Wangaratta Chronicle on 3 September 2021 which explained to the general people in the area the steps taken by the Reids to repay the debt to their customers. To the extent that that assists the Reids in retrieving the good will that has been lost by this criminality, I congratulate the local paper for the steps they took. I note in that article, Mrs Reid stated that they have to move on and be resilient. If I may say so, clearly, they will do so from my observation of the documents put before the Court.

Objective Criminality

11 As to the objective criminality, similar to *Apted v The Queen* [2021] VSCA 151, [11], here the criminality is over a period of four years involving a gross breach of trust by Ms Roberts whereby she has exploited a small family business and produced, for that family business and its owners, an extremely serious impact upon them. Mr Sprague in Exhibit C, his submissions as to sentence, and in

particular paragraph 10, detailed the features of this serious criminality by way of objective gravity and they are as follows:

(i) the substantial amounts involved;

(ii) the protracted periods of offending in regard to Charge 1, two years and three months; in regard to Charge 2, 10 months;

(iii) the volume and frequency of the amounts extracted from the company bank account;

(iv) the submission made by the prosecution that, not only were some clients repaid during the period of this criminality, but to an extent such repayments allowed the continuation of such criminality in so far as they avoided detection; and finally

(v) the gross breach of trust.

12 As a consequence the prosecution classified, the objective criminality in regard to each of these charges as high. I agree with such submission and such was not disputed by Mr Taaffe. In that regard, Mr Taaffe in fact proffered an apology on behalf of his client to the Court. The Court accepts that but, of course, the real people to apologise to are the Reids and, indeed, that was the purpose of the open apology in Court.

13 The reason for this criminality, was that Ms Roberts used the funds to feed her obsessive use of poker machines. These Courts regularly see the results of this scourge upon our society. Suffice to say, time has shown that the refusal of the original Cain Government, and the subsequent Cain Government, to introduce such machines into Victoria was excellent governance of this State. Unfortunately, the Government in 1991, and thereafter, have not been so wise, despite the protestations at the time. I read from material on the internet that in 2004, both the premier who led the government at the time of the introduction,

and her successor, have admitted the mistakes they made in that decision, in particular the mistake in not ensuring that the use of poker machines was confined to casinos only, and not be allowed to proliferate, as it has, in our community.

14 Of course, since that admission in 2004, one can only say that such industry has blossomed and we even see, unfortunately, has been adopted by football clubs in order to assist them in their income obtaining and, indeed, very much the AFL as a source of their income. Indeed, one is constantly faced with advertising in so far as gambling is concerned when you watch an AFL game.

Circumstances of the Offending

15 Returning to the facts of this case, Mr Taaffe, on instructions, had said that not only did Ms Roberts use all of her legal financial resources to gamble on poker machines, but come the restrictions of COVID-19 in 2020 when she was required to work from home, she then utilised the remote online gambling site called 'House of Pokies'. I sought from the prosecution some advice as to this operation. Enquiries were also made of the local gaming authority. Apparently, this site operates under the licensing of the Government of Curacao. It is not registered as an operator under Victorian legislation, nor federally under the Australian Commission and Media Authority, nor does it pay any wagering tax to the Victorian government. Hence, Ms Roberts' losses of funds from the Reids' business up to approximately March 2020 went to the Victorian operators in these various towns. Thereafter, it went to god knows where, but apparently a company registered in Curacao. For those of you who might be ignorant as to where that is, it is an island off the Venezuelan coast.

16 Suffice to say, in both instances the ‘house never loses’. In Mr Roberts’ consultation with Dr Sorotos (Exhibit 3, paragraph 68), Ms Roberts stated she was losing at one stage, on the local machines, approximately $2,500 a week which she used to play at lunchtime and, no doubt, given that amount, other times, where she utilised all the spare cash that she had and, of course, the

proceeds from the Reids' business. Thereafter, when such local venues were closed, Ms Roberts utilised the online site 'House of Pokies'. In addition, during the period of utilising the onsite site, Ms Roberts won approximately $113,000 by way of various jackpots, but also managed, in addition to the money she stole, to plough that back into the operation. As I said, the 'house never loses'. At paragraph 70 of Exhibit 3, in talking to the psychologist, Ms Roberts said that she believed that she probably had pilfered approximately $180,000 from her employers. She was surprised to learn that it was in fact at least $600,000. Perhaps this gives some indication of the extent of her obsession.

17 This Court of course has had to deal with gambling addictions, no doubt, for the whole period of its time, but in particular since 1991, since the poker machines were introduced to this State. In 1995, Southwell J in *Martin v The Queen* (1995) 74 A Crim R 252, 257, as to the circumstances when a person came before the Court addicted to gambling said:

> 'It will be an unusual case where evidence of addiction to gambling will significantly reduce the impact of the element of general deterrence.'

18 That statement was considered subsequently in *Cavallin* by Tadgell J, as he then was in the Court of Appeal, in July 1996, No78 of 1996, when he said this:

> 'No doubt, in general [referring to what Mr Justice Southwell had said earlier] that is true but His Honour's remarks cannot be taken out of context. It is notorious that the availability of poker machines, as instruments of easy gambling, has dramatically increased in this state in the last few years. The nature and the full extent of the consequences to the community will no doubt remain to be seen. Courts will see cases of criminal activity as a direct product of poker machine gambling. Such crimes resulting from a gambling disease will have to be dealt with accordingly.' [9]

19 Unfortunately, His Honour did not go on to say what being 'dealt with accordingly' precisely means. However he was at pains to remark, that even if such a habit was pathological, that would not necessarily mean that the person who committed the crime was immune from imprisonment. I pause to think what Tadgell J, predicting in 1996 the impact of poker machines on our community, would have thought of poker machines being able to be remotely utilised in one's

home without any regulation whatsoever. Can I suggest Tadgell J's reaction would have been beyond imagination.

20 In this regard, I note the cases that have been referred to me. Clearly, Ms Roberts' crimes have not resulted in profligate spending such as in the *DPP v Zanin* [2020] VCC 963, [20]. That really relates to where people have used such monies that they have stolen from their employers to buy homes, to buy fancy cars et cetera, et cetera. It is not that sort of case. Equally, in *DPP v Caulfield* [2019] VSCA 131, again, a gambling case, the Court took the view that the gambling showed the context of the criminality but could not, in any way, be seen as an excuse. The particular finding in that case was that the emotional issues underlying the gambling were not mitigatory (see paragraph 34).

21 I have also closely considered the analysis of pathological gambling and its relations to *Verdins* principles as detailed by, Redlich AAJ in *R v Grossi* [2008] VSCA 51, [56]. In such context at the original hearing, the prosecutor, that is, Mr Sprague on behalf of the DPP, submitted, in particular in paragraph 25 of Exhibit C, and maintained in the plea that the gambling of Ms Roberts in this case should not be taken as being mitigatory. Nor at that stage did the defence submit that the principles of *Verdins* were apposite.

22 Given the above, I advised both counsel by e-mail last week that I was considering the role of *Verdins*, in particular given the evidence of Dr Sorotos (Exhibit 3, in particular paragraphs 102-106) and invited from them further submissions. I thank both counsel for their helpful submissions. Mr Taaffe resiled from his original submissions. Mr Sprague advised the Court in his document tendered today (Exhibit D) that the prosecution still maintained its position, but dependent on the finding of this Court, and on the basis that the Court found that *Verdins* principles were applicable, Mr Sprague provided what I have found to be an incisive analysis of the delicate balance in this sentencing

process that would have to be conducted in the process of instinctive synthesis that Courts are obliged to go through.

Plea of Annette Roberts

23 Coming then to the plea, Mr Taaffe tendered Exhibit 1, that is, the plea submissions, and as I have already said today, the additional submissions Exhibit 7. In regard to Ms Roberts' personal circumstances, they are set out at paragraphs 10-24 and are further detailed in the psychological report.

24 The first matter that Mr Taaffe relied upon was Ms Roberts' prior good character. It must be noted that such role as to mitigation is somewhat blunted by the fact that, without such good character, the opportunity for breach of trust would not be created or able to be effected. But it must be said that this factor is never obliterated.

25 Secondly, in this regard, the character references set out in Exhibit 6 are, in my view, exceptional. They are and do involve statements by Ms Roberts' husband, her two sons, her sister Jennifer and her brother-in-law Peter. They are particularly realistic, I think, and they are all accepting of the fact that their relative must be met by way of sentence with a period of imprisonment. However, despite all of them accepting that reality, they speak of a person, far removed from this serious persistent criminality. They were all incredulous that a habit they were aware of could have become such an obsession, and confirmed in their views that such obsession had root with ongoing and persistent depression suffered by Ms Roberts from early on and, in particular, from the post-partum depression she suffered from the birth of her second child.

26 Thirdly, the fact of the chronic depression and its effect in her life was confirmed particularly by her own general practitioner Dr Read, in the materials being set out in Exhibit 2. Mr Taaffe also relied upon the fact of the remorse effected and the early plea made in this matter. Ms Roberts is entitled to a discount because of that. I note the apology made in Court and I note the strong expressions of

remorse made to the psychologist, to the counsellor and to her own family as have been demonstrated in the testimonials. Such remorse has been demonstrated by the repayment of $27,500 which has been effected and, of course, by her willing assistance, once found out, in the investigation into this matter.

27 The fourth matter that Mr Taaffe came to was the prospects of rehabilitation. Exhibit 5 shows that Ms Roberts has attended 18 sessions from December 2020 through to August 2021 with the gambling therapist Mr Munyard and I note Mr Munyard's report at Exhibit 5. Mr Munyard's view was that Ms Roberts had shown high commitment to such sessions, he decided that her mental condition was such that she needed to be referred to a psychiatrist. Ms Roberts has also sought further help for her gambling and been to a counsellor on 11 occasions from 2 October 2020. Mr Munyard, in the report to the Court, again part of Exhibit 5, was of the view that Ms Roberts was fully accepting of her obsession, of the consequences that had wrought by way of her criminality and at no time did she seek to deflect responsibility. Further, he relied in particular on the opinion of Dr Sorotos at Exhibit 3, in particular paragraphs 95-96 that she was a low risk of further criminality. Given the consequences that must follow this criminality, it seems to me, despite the fact that we are talking about an obsession, that I can take the view that she has good prospects of rehabilitation.

28 The fifth matter of course relied upon is a factor that is very unique to our legal community at this time and that is the impact of COVID-19 and that has two particular aspects. Firstly, as Ms Roberts would have already experienced, once you have been put into prison, she has now had 17 days pre-sentence detention from the time that plea was conducted, you are required in prison to be isolated for 14 days. You thereafter live in a prison environment where such risks are no doubt a concern. You do not have visitors nor programs. Those matters must be taken into account by Courts and the public would have been aware of many cases where people were granted bail because of those particular risks in the

circumstances. The second matter which also has to be taken into account, is the utility of the plea during these times. This matter was set out in *Worboyes* [2021] VSCA 169, [39] where the impact of COVID-19 must be given, according to the Court of Appeal, greater weight in sentencing and it must be given a more pronounced effect as to the amelioration of sentence.

29 The sixth aspect was the hardship that Ms Roberts would encounter herself. It is quite clear, and there was no dispute from the learned prosecutor in his additional submission today, and also as set out in paragraph 106 of the psychologist's report, that because of her ongoing chronic condition, she will be impacted far more than the normal person by imprisonment in her circumstances. Indeed, the doctor was of the view that there was a possibility of exacerbation caused by being so imprisoned.

Verdins Principles

30 We then come to the question of *Verdins* [2007] 16 VR 269, [32]. Mr Taaffe tendered the voluminous report from the psychologist Dr Sorotos who is titled Doctor because she has a doctorate in clinical and forensic psychology. At paragraphs 68-71 she recounts the history of Ms Roberts in regard generally to gambling, but which was a family history and as to poker machines. Dr Sorotos notes at paragraph 102 that gambling was normalised in her upbringing, and at 104 she says as follows:

> '...These negative experiences significantly impacted her self-esteem and most likely consolidated her negative experiences at home….Ms Roberts' offending appears to have been precipitated by low self-esteem, a mental disorder, a negative mood state, feelings of disempowerment and, ultimately, a sense of helplessness in adaptively navigating problems in her world. These factors, unsolved for some years, perpetrated faulty thinking that sought to facilitate the escape/avoidance of her distress through gambling behaviours, which escalated to such a severe level, she eventually commenced stealing money to finance her addiction.'

31 I stress the next reference to paragraph 105:

32 'It is my opinion that Ms Roberts does meet the criteria for major mental illness, Major Depressive Disorder (MDD) and that she was experiencing symptoms consistent with this diagnosis at the time of offending. The depression appears to be long-standing and does not appear to be situational in nature; rather, there is a significant history of chronic depressive features.'

33 Dr Sorotos goes on in that same paragraph:

34 'Ms Roberts' depressive episode, therefore, created a condition in which she was more likely to employ maladaptive coping strategies, namely gambling and as a consequent need to continue financing the gambling through any available means.'

35 Dr Sorotos goes on to talk about the treatment that Ms Roberts needs and the significant difficulties that she would have in hospital.

36 I have given this matter consideration, both as to the authorities and the expert evidence before me. I find, given that evidence, that the evidence as to the addiction, the astoundment in regard to that from her character referees and, in this instance, a major mental illness of chronic major depression which apparently began at the birth of her son Sam and also relates to experiences at her home as a young child (see paragraph 103) and at school (104), that such chronic major depression disorder created the condition whereby Ms Roberts was likely to employ maladaptive strategies to cope with such mental condition, one of those being the gambling addiction. I find, therefore, that *Verdins* is enlivened due to such mental disorder and directly relates to the criminal behaviours here. As a result, principles 1, 3 and 4 dictate that Ms Roberts' culpability and the need for general deterrence, specific deterrence and denunciation must be moderated in the particular circumstances of this case.

37 Given the principles detailed by the High Court in *Dalgleish* [2017] 91 ALJR 1063, [64-68], Ms Roberts is entitled, indeed, as all people who come before this Court are, to an individualised just sentence based upon the facts that relate to

these two offences and the totality of the circumstances and submissions put to me by both counsel and, indeed, in particular as the counsel have submitted in the supplementary documents filed this day. As said by the learned prosecutor in that supplementary submission, in particular at paragraph 6, there is an exquisite sentencing balance here between the sentencing principles which apply to crimes of this seriousness with their effect on the victims, and the matters of mitigation detailed by Mr Taaffe. As to the application of that balance and doing as well as I can to apply such balance, I have decided to sentence Ms Roberts as follows.

Sentence

38 Ms Roberts, given your position, you obviously can simply remain where you are while I pronounce the sentence.

39 In regard to Charge 1, Ms Roberts, you will be convicted and sentence to a period of imprisonment of two and a half years.

40 In regard to Charge 2, you will be also convicted and sentenced to a period of imprisonment of nine months.

41 I order that two months of the period imposed in Charge 2 be served cumulatively with the base sentence of two and a half years in regard to Charge 1, making a total effective sentence of two years and eight months.

42 I order that you must serve a period of 16 months before being eligible for parole.

43 I declare pursuant to s18 that the 17 days that you have served to date, not counting today, be deemed as pre-sentence detention and that a notation of such be recorded in the records of this Court.

44 When sentences are pronounced in this Court, Parliament has decided that it is important for persons who plead guilty to be told what is the impact of their plea of guilty. That is a very difficult determination to make because, in your case, the principles of *Verdins,* which I have applied, the very unusual impact of COVID on

sentencing at this time for Courts, means that to isolate one factor to indicate what the sentence would otherwise be, had you not pleaded guilty, is extremely difficult. However, doing as best I can, can I indicate to you that had you not pleaded guilty, the sentence that you would have received would have been a period of three and a half years, not two years and eight months, and the minimum period that you would have had to serve in gaol before being eligible for parole would have been a period of two and a half years and not the 16 months that I have imposed.

45 I, as I have already indicated, have signed the order pursuant to s86, designating the amount that the victims are entitled to recover from you but, as I have already indicated, that seems very unlikely.

46 Do either counsel have any queries?

47 MS DEIGHTON: Nothing further, Your Honour.

48 MR SPRAGUE: Nothing arising, Your Honour.

49 HIS HONOUR: Thank you Mr Prosecutor and can I thank both Ms Deighton, you

Mr Prosecutor in your assistance in what I found not to be a very easy sentence. Ms Roberts, I wish you well and I am sure the positive comments made about you by all people, once you get over the service of this sentence, will prove to be. Yes, Mr Tipstaff.

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